

**DURHAM, NORTH CAROLINA**  
**MONDAY, MARCH 4, 2013**  
**7:00 p.m.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor William V. Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti, Howard Clement, III, Don Moffitt and Steve Schewel. Absent: None.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation followed by the pledge of allegiance led by Council Member Clement.

Mayor Bell read proclamations honoring Horace Calvin Hedgepeth presented to Thomasine Hedgepeth and designating March 11-17, 2013 as MS Awareness Week presented to Nancy Nelson representing the Greater Carolina's Chapter of the National Multiple Sclerosis Society. Both recipients made comments and thanked the Council for the recognition.

Mayor Pro Tempore Cole-McFadden requested a moment of silence in memory of Durham Planning Commissioner Harry Monds.

Mayor Bell asked for priority items by the City Manager, City Attorney and City Clerk. There were no priority items by the City Manager and City Attorney.

City Clerk Gray stated a valid protest petition was filed against General Business Agenda Item #21 [Zoning Map Change – Meadows at Southpoint].

**MOTION** by Mayor Pro Tempore Cole-McFadden seconded by Council Member Catotti to accept the City Clerk's priority item was approved at 7:11 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

Mayor Bell explained that the Consent Agenda is approved with a single motion and items pulled from that agenda by any citizen or council member will be discussed at the end of the agenda. No items were pulled from the Consent Agenda.

Mayor Pro Tempore Cole-McFadden stated she was not pleased with the workforce statistics for Agenda Item #8 [Amendment to Agreement to Provide Design Services for Structural Repairs at Church Street Parking Deck between the City of Durham and Kimley-Horn and Associates, Inc.]. She asked staff to provide information on how the city benefits from this firm that receives so much business from the City of Durham.

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**MOTION** by Council Member Schewel seconded by Council Member Brown to approve the Consent Agenda was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**[CONSENT AGENDA]**

**SUBJECT: Approval of City Council Minutes**

**MOTION** by Council Member Schewel seconded by Council Member Brown to approve City Council minutes for the February 4, 2013 City Council Meeting and February 7, 2013 City Council Work Session was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Durham Bicycle and Pedestrian Advisory Commission - Appointment**

**MOTION** by Council Member Schewel seconded by Council Member Brown to appoint Michael P. Valentine to the Durham Bicycle and Pedestrian Advisory Commission representing Recreation/Recreation Business with the term to expire on August 31, 2013 was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Durham City-County Appearance Commission - Appointment**

**MOTION** by Council Member Schewel seconded by Council Member Brown to appoint David L. Davis to the Durham City-County Appearance Commission with the term to expire on April 1, 2016 was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Durham City-County Environmental Affairs Board - Appointment**

**MOTION** by Council Member Schewel seconded by Council Member Brown to appoint Christopher A. Werner to the Durham City-County Environmental Affairs Board representing Law with the term to expire on June 1, 2013 was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

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**SUBJECT: Street Acceptances - Rose of Sharon Subdivision - Keystone Crossing Subdivision**

**MOTION** by Council Member Schewel seconded by Council Member Brown to accept the streets as listed for maintenance by the City of Durham was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

Rose of Sharon Subdivision

- 1) Copley Mountain Drive – from the east curb line of Rose of Sharon Road east to the centerline of Trail Wood Drive (1432'), and
- 2) Horsebarn Drive – from the centerline of Copley Mountain Drive north through the cul-de-sac (1255'), and
- 3) Horsebarn Drive – from the centerline of Copley Mountain Drive south to the centerline of Winrock Place (965'), and
- 4) Alumwood Place – from the centerline of Horsebarn Drive east through the cul-de-sac (322'), and
- 5) Bee Hill Place – from the centerline of Horsebarn Drive west through the cul-de-sac (280'), and
- 6) Winrock Place – from the centerline of Horsebarn Drive east through the cul-de-sac (432'), and
- 7) Winrock Place – from the centerline of Horsebarn Drive west through the cul-de-sac (255'), and
- 8) Trail Wood Drive – from the beginning of construction @ STA 1+00 (north of Pine Top Place) north to the end of construction @ STA 22+58.71 (north of Jewel Flower Place) (2159'), and
- 9) Bronze Leaf Place – from the centerline of Trail Wood Drive west through the cul-de-sac (418'), and
- 10) Jewel Flower Place – from the centerline of Trail Wood Drive west through the cul-de-sac (263').

Keystone Crossing Subdivision

- 1) Mainline Station – from the south curb line of Keystone Park Drive south through the cul-de-sac (1243'), and

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- 2) Trolley Court – from the centerline of Mainline Station west through the cul-de-sac (177’), and
- 3) Station Drive – from the centerline of Mainline Station southeast to the south curb line of Keystone Park Drive (1610’), and
- 4) Roundhouse Lane – from the southwest curb line of Keystone Park Drive south to the City Limit Line (465’.)

**SUBJECT: Contract Administration and Change Order Performance Audit (November, 2012)**

**MOTION** by Council Member Schewel seconded by Council Member Brown to receive and accept the Contract Administration and Change Order Performance Audit dated November 2012 as presented and approved at the January 28, 2013 Audit Services Oversight Committee meeting was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Upgrade of Existing Computer Aided Dispatch System - SunGard Public Sector Inc.**

**MOTION** by Council Member Schewel seconded by Council Member Brown to authorize the City Manager to enter into an agreement with SunGard Public Sector Inc. for the SunGard CAD upgrade in the amount of \$108,279.00, to be funded from the Emergency Telephone System Surcharge Fund, without competitive bidding, as authorized by G.S. 143-129 (e)(6), on the grounds that price competition is not available and that compatibility is the overriding consideration was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Amendment to Agreement to Provide Design Services for Structural Repairs at Church Street Parking Deck between the City of Durham and Kimley-Horn and Associates, Inc.**

**MOTION** by Council Member Schewel seconded by Council Member Brown to authorize the City Manager to execute the Amendment to Agreement to provide design services for structural repairs at Church Street Parking Deck between the City of Durham and Kimley-Horn and Associates, Inc. in the amount of \$20,900.00 for design services to address ADA parking deficiencies;

To establish a contingency in the amount of \$3,000.00; and

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To authorize the City Manager to negotiate and execute amendments to the Kimley-Horn and Associates, Inc., Professional Services Contract, so long as the total contract amount does not exceed \$97,050.00 was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Second Amendment to Management Agreement by and between City and County of Durham and Global Spectrum, L.P. for the Durham Convention Center**

**MOTION** by Council Member Schewel seconded by Council Member Brown to authorize the City Manager to execute the second amendment to the Management Agreement by and between the City and County of Durham and Global Spectrum, L.P. for the Durham Convention Center was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Amendment to Contract for Fun2Ref as Booking Agent - Dan Dunbar and Lynn Dunbar DBA as Fun2Ref**

**MOTION** by Council Member Schewel seconded by Council Member Brown to authorize the City Manager to execute an amendment to the booking agent contract with Dan Dunbar and Lynn Dunbar DBA as Fun2Ref for \$8,640.00 so that the total contract amount will be \$57,836.00 was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Contract ST-258, Angier-Driver Streetscape - Fred Smith Company**

**MOTION** by Council Member Schewel seconded by Council Member Brown to authorize the City Manager to execute a contract for ST-258, Angier-Driver Streetscape Project with the Fred Smith Company in the amount of \$3,316,720.60;

To establish a contingency fund in the amount of \$663,344.12; and

To authorize the City Manager to execute change orders to the contract so long as the total project cost does not exceed \$3,980,064.72 was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Sidewalk Repairs and Curb Ramps SW-29 - Browe Construction Company, Incorporated**

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**MOTION** by Council Member Schewel seconded by Council Member Brown to authorize the City Manager to execute a contract for SW-29: 2013 Sidewalk Repairs and Curb Ramps project with Browe Construction Company, Incorporated, of Clayton, North Carolina in the amount of \$685,412.50; and

To establish a contingency fund in the amount of \$102,811.88 (15%) resulting in a maximum total project cost of \$788,224.38 was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Assessment Rates for Petitioned Sidewalk Improvements**

**MOTION** by Council Member Schewel seconded by Council Member Brown to adopt a Resolution Establishing a Process for Petitioning and Ordering of Sidewalks Inside and Outside the Durham Walks! Pedestrian Plan; and

To adopt an Ordinance to Change Petitioned Sidewalk Assessment Rates was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**Resolution #9846**  
**Ordinance #14408**

**SUBJECT: Environmental Systems Research Institute Inc., Software Maintenance Agreement Fiscal Year 2013**

**MOTION** by Council Member Schewel seconded by Council Member Brown to authorize the City Manager to purchase renewable software maintenance service provided by Environmental Systems Research Institute, Inc. in the amount of \$93,450.00 to cover the period of one year was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Southern Reinforcing Main Phase IIB Project - Sullivan Eastern, Inc.**

**MOTION** by Council Member Schewel seconded by Council Member Brown to authorize the City Manager to execute a contract with Sullivan Eastern, Inc., for the Southern Reinforcing Main Phase IIB Project for an amount of \$2,659,763.64;

To establish a contingency fund for the contract in the amount of \$265,236.36; and

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To authorize the City Manager to negotiate change orders for the contract provided that the cost of all change orders does not exceed \$265,236.36 and the total project cost does not exceed \$2,925,000.00 was approved at 7:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**[GENERAL BUSINESS AGENDA]**

**SUBJECT: 2012 Annual Police Crime Report**

To receive the Durham Police Department's 2012 Annual Summary Crime Report.

Police Chief Lopez gave a power point presentation on the 2012 Annual Summary Crime Report highlighting the following.

2012 DPD Highlights

- Part 1 Index Crime – 23-Year Low
- New Patrol Cars
- Chop Shop Operation

2012 Crime Prevention Highlights

- Police Athletic League (PAL) Mentoring Program
- National Night Out Awards
- PSN Faith Acts Initiative
- Trail Watch

Part I Violent Crime

- Homicides, rapes, aggravated assaults and robberies
- Up slightly from 2011
- Rate per 100,000 down 1% from 2011
- Rate per 100,000 down 26% from 2000
- Robberies at 22-year low

Part I Violent Crime – 3 Year Average 2010 – 2-012

- Homicides, rapes, aggravated assaults, robbery

Part I Property Crime

- Burglary, Larceny and Motor Vehicle Theft
- Lowest since 1988
- Down 9% from 2011
- Rate per 100,000 down 10% from 2011
- Rate per 100,000 down 44% since 2000

Part I Property Crime – 3 Year Average 2010- 2012

Burglary, Larceny and Motor Vehicle Theft

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Part 1 Index Crime

- Total of property and violent crime
- Part 1 index crime lowest in 23 years
- Down 7 percent compared to 2011
- Index crime rate per 100,000 down 9 percent compared to 2011
- Index crime rate per 100,000 population down 42 percent since 2000

Clearance Rate

Staffing Levels – Sworn and Non-Sworn

Priority 1 Call Response Time

- 3,345 Priority 1 calls from July 1, 2012 to Dec. 31, 2012
- 5.9 minute average response time – Just over target of 5.8
- 53.8% under 5 minutes – Does not meet target of 57%

DPD Service to the Community

DPD Neighborhood Portfolio Exercises

2000-2012 Index Crime Rate Trend

Council held discussion on the following: commended police department for their efforts and community work, statistics/trend moving in a downward direction, national crime rates, crime rate decrease, clearance rate, trail watch, mental health officers, youth involvement and gun problem.

Council Member Schewel spoke in support of keeping mental health officers in the budget.

Victoria Peterson stated part 2 crimes are being overlooked and that Holton Resource Center should be used as vocational training facility for young men in the community who cannot find jobs.

Mayor Bell asked Ms. Peterson to share her comments with the school board since they handle programs at Holton School.

No action was taken by the City Council on this item.

**[GENERAL BUSINESS AGENDA - PUBLIC HEARINGS]**

**SUBJECT: FY2013-14 Fiscal Year Budget and FY2014-2019 Capital Improvement Plan (CIP)**

To conduct a public hearing to receive comments on the FY2013-14 Fiscal Year Budget and FY2014-2019 Capital Improvement Plan (CIP).

John Allore, of Budget and Management Services, stated this is the first of two public hearings to receive comments on the budget and capital improvement plan. He announced that the next public hearing will be June 3<sup>rd</sup> after the City Manager presents the preliminary budget on May 20, 2013.

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Mayor Bell opened the public hearing.

James Chavis raised concerns with the Venable Building, Old Main Street Building and the lack of response to questions he raised in the past regarding contract and utility concerns.

City Manager Bonfield indicated that he would respond to Mr. Chavis' concerns.

Victoria Peterson asked that a Male Professional African American Task Force be created to address crime.

Mayor Bell closed the public hearing.

**MOTION** by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to receive comments on the FY2013-14 Fiscal Year Budget and FY2014-2019 Capital Improvement Plan (CIP) was approved at 7:53 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**SUBJECT: Comprehensive Plan Amendment - Meadows at Southpoint (A1200002)**

To conduct a public hearing to receive comments on the Meadows at Southpoint (A1200002) Plan Amendment, and

To adopt a Resolution to Change the Future Land Use from Office to Commercial and from Low Density Residential (4 DU/Ac. or Less) to Office.

Recommendations: The Staff recommends approval based on unique conditions warranting a request to change the adopted future land use, committed transportation improvements, and that the proposed land use pattern meets the four criteria for plan amendments found in the Unified Development Ordinance.

Planning Commission recommended approval, based on information provided in the staff report, the justification, information heard at the public hearing, and for meeting the criteria for plan amendments, 10-1, on October 9, 2012. (The applicant, Haden Stanziale, is requesting to amend the Future Land Use Map in two ways: 1) Change approximately 7.12 acres from Office to Commercial, and 2) Change a two-acre parcel from Low Density Residential to Office.

Patrick Young, of the City/County Planning Department, certified that all public hearing items have been advertised in accordance with law and affidavits are on file. He reported the applicant, Haden Stanziale, made a request to amend the Future Land Use Map in two ways by moving approximately 7.12 acres from Office designation to Commercial, and a two-acre parcel from Low Density Residential to Office designation. He referenced that the plan amendment only covers approximately 9.1 acres of the 49.8 acres covered by the companion zoning case.

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The site is located in the Suburban Tier, on the south side of NC Highway 54 and east of Barbee Road. He said staff determined the request would meet the four criteria for plan amendments outlined in the Unified Development Ordinance.

First, Mr. Young stated, the proposed commercial land use at the corner of NC 54 and Barbee Road is consistent with policies in the Comprehensive Plan regarding the spacing, location and configuration of commercial nodes within the Suburban Tier. In addition, office land uses are typically regarded as a transitional land use between residential and commercial and this proposal meets the intent of those policies.

Second, the proposed land uses are not out of character with the adopted future land uses, nor with recent growth patterns in the area. The rear of the subject side abuts an established residential neighborhood; however staff has determined that environmental features and required landscaping would provide adequate buffering between this site and the adjacent neighborhood.

Third, the proposed land use would not cause substantial adverse impacts and noted transportation impacts will be discussed more thoroughly as part of the zoning case, but the traffic impacts on the adjacent roadways would be mitigated by the proposal and the proposed site is of adequate shape and size for the proposed uses.

He stated staff recommends approval of the Comprehensive Plan Amendment and the Planning Commission recommended approval at its October 9, 2012 meeting.

Mayor Bell opened the public hearing.

Attorney Kenneth Spaulding, representing the applicant, spoke in support of plan amendment that would consist of 9.17 acres out of a total of 49.79 acres which would be addressed later tonight. Of the 9.17 acres, 7.12 acres would be added as commercial which would assist in making the problematic traffic congestion non-conforming use to be brought back into a very much needed consistent and conforming use. The remaining 2.05 acres would be designated as office which would help to promote a comprehensive plan and goal of reasonable transition between designated uses. He stated the applicant is seeking approval of a modest change in the present land use designation already existing at this location, referenced staff's review that this request is consistent the intent, goals and objectives and policies of Durham's adopted plan relating to land use, transportation, conservation, and environment. He further noted this is consistent and compatible with the current future land use map designation and commercial nodes expansion would exist in bringing a non-conforming use into a conforming use at this location, this amendment is consistent and would not create a substantial adverse impact beyond what is already allowed by the presently adopted future land use map in this area, is consistent and of adequate size and shape to accommodate what they are seeking. He referenced that the Planning staff and Joint City/County Planning Commission recommended approval of this request and urged Council to approve this amendment.

George Stanziale, representing the applicant, stated that the Comprehensive Plan Amendment 1) would bring the existing gas station site into compliance and should the rezoning be approved later tonight, the station would be relocated and rebuilt to relieve the intersection of congestion; 2) allow for limited and low traffic use at the corner at Highway 54; and 3) as well as include a small residential lot along Barbee Road to be included as office institutional for the purposes of

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density calculation. He stated the proposal would comply with the Future Land Use Map designations with the exception of the corner of commercial use and the residential lot. He stated they are meeting all adopted policies and received recommendation of approval from staff as well as the Planning Commission.

George Brine spoke against this item. He read the following statement for the record: First, I want to thank the applicant and the development team for taking the time to have multiple meetings and discussions with us. In spite of these, our visions for the site in question are still different.

As shown on the rezoning development plan, the site involves three tracts, and I will briefly discuss each one. Tract 2, located at the SE corner of NC 54 and Barbee Road, is where the gas station is located. The gas station has been there about 40 years, and it will continue to be on that corner no matter what happens in these cases. Therefore, we could support placing a commercial designation on tract 2, although not as part of the present request. We do not support the broader commercial designation since we are still not sold on having self-storage units behind the gas station.

Our next concern is about tract 3, which is adjacent to and south of tract 2 along Barbee Road. This tract is presently designated low-density residential and zoned RR. It is used for single family residential, which use will continue in the future. The proposal is to designate it office and to zone it O/I. Our concern is that such actions may encourage the spread of office development along this portion of Barbee Road, where there are some vacant lots. Due to recent changes to the rezoning proposal, the applicant has no reason to have an office designation on this tract or to zone it O/I.

The remainder of the site is identified as tract 1. This tract is presently designated office, which is a change from an earlier combination of low-density residential and office designations. Here our concern is with the fact that the plan amendment request keeps the present office designation. In our early meetings, the applicant told us that he wanted to place an appropriate residential designation on this tract. However, possibly about the time that the apartment builder withdrew from the project, he decided to use the office designation and O/I zoning. These changes raised a red flag for us. We are aware that the proposed apartments are allowed in the O/I district. However, we also believe that the applicant may be keeping open the option of flipping this tract for office development. Certainly changing to office development would be easier if an office designation and O/I zoning were in place. Additionally, office development might fit better with the proposed commercial elements. I also point out that the last time we asked about it, the applicant still had not found a replacement for the apartment builder.

The bottom line for us is this: if there is going to be residential development on this tract, then we want to see a residential designation on the FLUM. Furthermore, if a residential designation is placed on this tract, our preference is for low-density residential in keeping with the agreement forged during the development of the former Triangle Township Plan. We ask that Council deny the applicant's Plan Amendment request.

Nellie Riley spoke against this plan amendment. She read the following statement for the record: Good evening, Thank you for this opportunity to speak. As a resident of this area for over 30

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years, I have watched the Southwest quarter of Durham expand and grow through positive economic development becoming a major hub for commerce. South Point Mall, major upscale apartments, and town homes surrounding the Mall are examples of this growth. Most of the businesses and development have continued to contribute to this positive commercial growth while at the same time properly aligning with the existing neighborhoods.

I speak in opposition to the items which are related to the Meadows at South Point for three reasons: (1) a self-service storage unit is not congruent with existing communities of single family homes in (Hunters Woods and Parkwood, (2) the increase of apartment complexes on Highway 54, and (3) increased traffic on Highway 54 and Barbee Road.

First, let me say that I have attended all of the meetings that were open to the community at large. At the first meeting, I expressed concerns about a storage unit. I am still opposed to such a unit even though it is two stories. In my research on storage units in Southwest Durham, I have not found a single storage unit that is adjacent to a neighborhood with single family homes. For example, Securcare Storage on Highway 55 is in a business district, Ample Storage on Carpenter Fletcher Road, is surrounded by small businesses and Cardinal Storage on Martin Luther King Drive is near other businesses. Why would we want a storage unit next to the homes in Hunter's Woods and Park Wood?

At the first meeting we were told that the apartments would be luxury. The developer stated at the last meeting that a new developer to build the apartments had not been secured. Therefore, we do not know what type of apartments will be built. Will they be luxury, as the one across from South Point Mall or mid quality like those at Glenn at the Pines or will apartments be built at all?

Additionally, I am opposing another apartment complex on Highway 54 because of the increased traffic that the apartment complex will generate. If this apartment complex is built there will be six apartment complexes on Highway 54 that are within approximately 1 quarter of a mile of each other. If each of the current complexes has 300 units that would be 1500 units and adding the proposed apartment complex the combined number of units would be 1800 units in this corridor. Thus, the development will increase the traffic for both Barbee Road and Highway 54.

I request that the request for approval for the Meadows at South Point be denied because a storage unit is not congruent with the community, we are not sure of the quality of the added apartment complex ( high density of apartments on Highway 54) and the increased traffic on Highway 54 and Barbee Road.

Paul LeClair spoke against the plan amendment expressing light, noise and pollution concerns. He stated the residents of Southwest Durham do not need another apartment complex.

Allen Harris spoke in opposition to the plan amendment. He raised concerns with the storage units in a residential area, expanded gas station and apartments. He stated this development does

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not fit in this area and has a major impact to Barbee Road and would impact residential life for years to come.

Attorney Spaulding, representing the applicant, addressed concerns raised from the opponents regarding office use, light, noise and residential life aspect and self-storage. Regarding apartments existing now and traffic, he noted these issues would be addressed during the rezoning case.

George Brine, an opponent, stated if residential is going to be placed on the site, why can't there be a residential designation on the Future Land Use Map.

For clarification, Patrick Young, of the City/County Planning Department, stated all representations made by the applicant are similar with the committed elements that would be put on record tonight.

Attorney Kenneth Spaulding stated that the Comprehensive Plan calls O&I zone for right now.

Jim Anderson, representing the applicant, provided clarification on the discussions with neighbors about apartment builder. He pointed out that the original builder decided to go with another site in Durham. He stated they are not under contract with another builder to develop the luxury apartment complex, but there is a verbal agreement pending the outcome of the zoning case.

Patrick Young, of the City/County Planning Department, pointed out that there is no definition for luxury apartments.

Jim Anderson stated that luxury apartments would be similar to standards of the Lodges at Southpoint.

Paul LeClair stated there is no longer a luxury apartment area.

Nellie Riley expressed a concern that these luxury apartments would be empty due to a gas station and storage unit being in their backdoor.

Regarding luxury apartments, Attorney Kenneth Spaulding stated there are a lot of people that do look for amenities, conveniences and location.

Mayor Bell closed the public hearing.

Regarding neighborhood concerns, Council Member Moffitt pointed out that apartments are currently called for in the Comprehensive Plan.

George Stanziale, representing the applicant, made comments on the buffer area that is presently residential. He explained that it was included for density calculation and the applicant is committing to no development on it and never could be used as part of the zoning for anything other than a single family house with a single driveway. He stated the density was reduced due to a request from neighbors and the applicant does not need that lot; however, taking it out now would send the applicant back through the entire process.

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**MOTION** by Council Member Brown seconded by Council Member Clement to receive comments on the Meadows at Southpoint (A1200002) Plan Amendment, and

To adopt a Resolution to Change the Future Land Use from Office to Commercial and from Low Density Residential (4 DU/Ac. or Less) to Office was approved at 8:33 p.m. by the following vote: Ayes: Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: Mayor Bell and Mayor Pro Tempore Cole-McFadden. Absent: None.

**Resolution #9847**

**SUBJECT: Zoning Map Change - Meadows at Southpoint (Z1200001)**

To conduct a public hearing to receive comments on the zoning map change for Meadows at Southpoint (Z1200001);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200001 out of Residential Rural (RR), Residential Suburban - 20 (RS-20), and Office Institutional (OI) and placing same in and establishing same as Commercial General with a development plan (CG(D)) and Office Institutional with a development plan (OI(D)); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan, should the plan amendment be approved, and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials; or

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Determination: Staff determines that this request is consistent with the Unified Development Ordinance; however, notwithstanding approval of the plan amendment, this request is not consistent with the Comprehensive Plan.

Planning Commission Recommendation and Vote: Approval, 8 - 3 on October 9, 2012. The Planning Commission finds that the ordinance request is not consistent with the adopted Comprehensive Plan. However, should the plan amendment be approved, the request would be consistent with the Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing, the information in the staff report, and additional commitments proffered by the applicant.

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[The site is located in the southeast quadrant of the Barbee Road and NC 54 Highway intersection, PIN 0728-03-34-9090, -44-3293, -04-54-0087.SPL(partial)].

**Note: Valid protest petition filed.**

Patrick Young, of the City Council Planning Department briefed Council on the Zoning Case Z1200001, Meadows at Southpoint, which is a request to change the zoning designation of 49.79 acres located at 6437 and 6525 Barbee Road, and 1102 NC 54 Highway, at the southeast quadrant of the intersection of Barbee Road and NC 54 Highway, from Rural Residential, Residential Suburban – 20, and Office Institutional to Commercial General and Office Institutional with a development plan for a proposed development of up to 135,000 square feet of non-residential development and up to 300 apartments. He noted there is a revised staff report to include a number of changes, proposed by the applicant, that are new commitments as follows: the maximum square footage of non-residential development was 150,000 and the proposed residential development was a maximum of 365 apartments. Also, there is a reduction in net residential density from 10.5 units per acre to 8.6 units per acre. He reported this request is consistent with the future land use designation based on the action just taken by the Council. He read the following committed elements and pointed out all previous commitments identified on the staff report will remain in place unless noted:

New committed element is a revised element previously identified as text commitment #3 on the development Plan regarding permitted uses:

Permitted Uses: 3

a) Commercially zoned property uses are limited to 1) fuel sales including accessory retail sales 2) self storage and 3) accessory care taker residences for each use

b) The gas station building shall not exceed 1,000 square feet of heated area and not more than 300 square feet of that area shall be used for retail sales and shall not be accessible by customers for the purchase of sale items. The remainder of the 1,000 square feet shall be used as the facility's caretaker residence.

He noted that this commitment would allow additional external vending, including a vending kiosk, as long as they are not ventilated or heated.

c) The gas station would be limited to eight fueling positions

d) The self storage should be 100 percent indoor storage, and accessory office, retail area and one residential shall be allowed. The accessory self storage office and retail shall not exceed 2,000 square feet collectively.

New Text Commitment #4

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Provide a gate internal for site entrance #1 to regulate traffic flow into and out of the residential section of the development. The location of gate would be located to allow the free flowing movement of the non-residential elements of the development.

### New Text Commitment #5

Provide a 50 foot buffer at .6 opacity along eastern property line that is adjacent to existing residentially zoned property.

### New Text Commitment #6

Fence will be located around the apartments and associated parking lots, completed prior to the final certificate of occupancy of the last apartment building.

### New Text Commitment #7

Storage building walls located within 50 feet of the NC 54 right of way should be constructed with a brick and/or cultured natural stone façade on all sides except windows, openings, access, metal soffits, doors, downspouts and cloud windows. Vinyl aluminum siding shall not be allowed on any building.

### New Text Commitment #8

The developer shall provide a five foot concrete sidewalk along NC 54 within the existing right of way from the eastern property line of the property connecting to the existing Revere Road sidewalk which shall be constructed to NCDOT and the City of Durham standards and shall be subject to all standard approval and permitting procedures and constructed concurrently with the Highway 54 roadway improvements required of this project.

### New Text Commitment #9

Shall be completed prior to the issuance of a certificate of occupancy. The developer shall circulate a petition among owners of property on Amhurst Road and if sufficient signatures are obtained—75% of effected property owners and warrants are met, the developer shall install no more than three speed humps per City of Durham or NCDOT standards between NC 54 and Barbee Road subject to NCDOT or City of Durham approval.

### New Text Commitment #10

Must be satisfied prior to the issuance of the first certificate of occupancy. The applicant, prior to the first certificate of occupancy, shall provide a \$150,000 contribution to the North Carolina Department of Transportation [NCDOT] towards traffic improvements at Herndon and Barbee Roads. This contribution shall be used for traffic improvements to include signals and roundabouts at that intersection.

Mr. Young stated that staff does not have any controls on how NCDOT controls or manages those funds. Staff cannot enforce how NCDOT allocates funds. He mentioned that there is a traffic impact analysis associated with this project that identified the installation of a roundabout at Herndon and Barbee Road to offset transportation impacts of the proposed project. He reported NCDOT currently does not have the funding at this time to proceed with the construction of this project even though it is programmed and for that reason, staff has determined that this request is not consistent with UDO policies that require mitigation of

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transportation impacts associated with zoning cases when there is a traffic impact analysis required.

### Final Revised Design Commitment #3

The applicant has committed to the gas station building facades which would include one or more of the following materials: brick, natural or cultured stone, synthetic stucco or similar product, cement fiber planks or panels, no vinyl or metal siding shall be allowed, vinyl or metal clad windows and doors shall be allowed. He stated additional commitments by the applicant include: 1) 135,000 square feet maximum on a non-residential square footage; 2) a net residential density of 8.6 units per acre; 3) 300 maximum multi-family units and 4) .6 opacity buffer as mentioned earlier.

He stated staff has determined that this request is consistent with the Comprehensive Plan; however, is not consistent with the Unified Development Ordinance based on transportation policies and the Planning Commission recommended approval at its October 9, 2012 meeting.

Mayor Bell opened the public hearing.

### Proponents

Attorney Kenneth Spaulding, representing the applicant, spoke in support of this item referencing meetings with surrounding neighborhoods to share their desire for development and to hear their concerns. As a result many changes, additions and clarifications have been made and committed. Most significant in the neighbors' request was their desire for the developer to do something about the unsafe and congested gas station at the intersection of 54 and Barbee Road. After meetings with the owner of the gas station, additional property was provided and gas station owner agreed to become a part of this rezoning effort. He stated the applicant had to rearrange, modify and redesign development at a substantial cost as well as meet the requests of neighbors. After meetings with the neighbors, the applicant made a number of changes. He thanked the neighbors for making this a better plan for their neighborhood, the driving public, City and the developer. He noted some neighbors are opposed to apartments in this area, referenced staff report dated February 4, 2013 on page 6--residential infield highlighting that development of apartments along a major thoroughfare with ready access to the network and transit is a supportable, smart growth strategy and development plan demonstrates commitment and apartments would not intrude onto existing single family parcel [6525 Barbee Road] also acting as a transition to the established neighborhood to the west. He stated this completed plan with input from staff, neighborhood, Council and developer has created a positive effort and result of a constructive public/private partnership that will benefit the neighborhood and entire City of Durham by fixing a 40-year-old gas station, addressing intersection of Barbee, Massey Chapel and Herndon Roads that have been a problem area for not only the existing residence but present and future residents of Durham who drive this area. He noted that intersection fails at an F level. Through this rezoning and efforts of NCDOT, that intersection would be elevated to a B level based on their improvements and the development of this plan. By dedicating also at the developer's expense with no cost to the taxpayers significant right-of-way along NC 54 for future widening has been given. Also, it has been a benefit to building additional lanes along NC

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54, Barbee Road and Grandale to better assist the flow of existing and future traffic at these locations; assisting in the funding for potential completion of the state initiated roundabout at Herndon, Massey Chapel and Barbee Roads. In conclusion, he stated this a private developer 1) seeking no public incentives, 2) adding and dedicating to the state over an acre of highway right of way along NC 54 for its future widening; 3) helping to create a public/private partnership with NCDOT in helping to complete programmatic intersection; 4) adding additional road improvements, turn lanes, and additional asphalt to enhance this location 5) alleviating a 40-year old gas station with its overflowing, congestion and safety concerns; 6) allowing for the setback of this station from NC 54 to create a better and safer situation; and 7) adding to the City and County of Durham tax base through rezoning improvement. He urged Council to support this request.

George Stanziale, representing the applicant, made comments regarding text commitments and road improvements for this project, meetings with communities at-large, and withdrawal of eight names from protest petition. After item was granted a deferral, he stated there were two additional community meetings and commitments were added to include: decrease in density from 10.5 units per acre to 8.6 units per acre, sidewalk connection along Highway 54, limits on retail uses, adding fence around apartments, and \$150,000 donation to NCDOT for the construction of roundabout on Barbee Road. He made comments regarding the letter received from NCDOT's Acting District Engineer that committed to building roundabout, their commitment of 8.6 units per acre, residential only on this property in the O/I district and adding commitments [new/revised] as a result of letter from Mr. George Brine relating to the addition of off-site sidewalk on Highway 54, gas station design commitment related to materials and the text commitment change to on-site gate to help regulate traffic in and out of the Barbee Road entrance.

#### Opponents

George Brine spoke against this zoning request. He read a statement pointing out the following:

Over the past few months we have provided you with details about our concerns regarding the proposed development. You are hearing more details this evening about our concerns and preferences. I will touch briefly on five points.

1. To follow up on my earlier remarks, we could support CG zoning on tract 2, but not as part of this application. We oppose the extension of O/I zoning over the balance of tract 1, and, because it is unnecessary, we oppose any rezoning of tract 2.
2. As I am sure you are aware, traffic, in particular the traffic on Barbee Road is a major issue with the proposed development. In spite of all the last minute changes, the fact remains that development under the present zoning, even if slightly modified, would produce less traffic according to the staff report. We prefer less traffic.
3. There is a strong feeling in the neighborhood that adjacent residential development on tract 1 should be low density single family residential. We understand that the present RR zoning is likely inappropriate on this site; however, we believe that R-20 zoning would be appropriate.

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Moreover, we believe that there is still a need for larger residential lot sizes in south Durham. We do not subscribe to the notion that all future houses in south Durham must be built on tiny lots, or that all future residential development next to major thoroughfares must be either apartments or townhomes. There is no variety in that.

This tract is one of the few left in south Durham where R-20 zoning can still be done. Although the gas station will still be present, we think that an attractive R-20 development is feasible here, especially if the storage component is eliminated.

4. I believe that we all agree that the intersection of Herndon Road and Barbee Road needs improvement right now. We also understand what the applicant is trying to accomplish with his committed donation to NCDOT. Our concern is with the NCDOT end of things. What happens if NCDOT holds a public hearing on the round-a-bout, receives an earful of negative feedback, decides to back out, and in the process takes away what is left of their half million dollars? Will the City step in and help pay for improving this intersection? I think the bottom line here is this: do we need a backup plan for improving this intersection, and, if so, what is that plan?

5. Prior to the Planning Commission public hearing the applicant made commitments to construct two additional right turn lanes on NC 54, both to properties not associated with his proposed development. At our last neighborhood meeting, when the applicant told us about his density reductions, he also indicated that these two right turn lanes were no longer needed. Yet these commitments remain on the development plan. We are surprised that the applicant would want to spend money to construct turn lanes that are no longer needed. Is there some planned future maneuver that the applicant is not telling us about? Does he plan to repeat the public hearing process to remove these two committed elements? As we see it, the danger with repeating the public hearing process is that other committed elements could also be changed. Therefore, we want to know what will happen as a result of these two commitments if these right turn lanes are really unnecessary. We note that considerable effort has gone into arriving at the plans before you this evening. Yet it appears to us that there is a possibility that additional changes may be coming in the future.

We believe that Council's best course of action tonight is to deny the applicant's zoning application request.

Nellie Riley spoke against this item. She asked that this request be denied because of the high volume traffic on Barbee Road and felt doubtful that NCDOT would allow roundabout to come about due to funding in this state. She made comments regarding the gas station not specifically impacting her and expressed concern with storage units near luxury apartments. She asked Council to deny this zoning and have the developers come up with something more suitable for the area.

Jesse Shaw spoke in opposition to this item. He raised a concern with existing traffic problem on Barbee Road, asked Council to leave the zoning as a single family dwelling and said he does not have a problem with the gas station.

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Paul T. LeClair spoke against this zoning map change. He raised a concern with zoning and with abutting high density residential against rural residential areas.

Dr. Jeffrey Brantley spoke against this zoning map change. He showed pictures of Barbee Road that addressed public health consequences and traffic implications of opening up a rezoning that would include apartments, storage units, and expanded gas station.

Dolores Brine stated she was opposed to the zoning change due to the following: 1) current zoning is in keeping with the adjacent residential neighborhoods with lower density than proposed and with single family homes rather than apartments. Secondly, the currently proposed development would produce a real problem with traffic on Barbee Road and blind curve accidents.

Nancy Ciaffone raised a concern with this item. She expressed drainage and runoff concerns as a result of this proposed development that would include an enlarged gas station, storage units and apartments. She urged Council to keep the current zoning and environment safe.

Rebuttal

Attorney Kenneth Spaulding addressed the following issues raised by the opponents: backup plan for Herndon, Massey Chapel and Barbee Roads intersection, traffic, zoning laws, Barbee Road traffic, gas station, neighborhood concerns, and committed elements. He stated this project would benefit not only the residents as it relates to the improvements that would be made in their neighborhood, at their intersection, but also for the City of Durham and North Carolina. He urged Council to support zoning map change.

Mayor Bell made comments regarding the road improvements. He asked questions regarding the timeframe for having road improvements completed as it relates to the apartment complex development.

Attorney Kenneth Spaulding, representing the applicant, stated that road improvements are done on a phasing measure. He stated that they would make a commitment that no certificates of occupancy would be issued for this project until those roads and those improvements have been completed.

Patrick Young, of the City/County Planning Department, noted that staff could accept the modification to the commitment—that all committed roadway improvements would be completed prior to the first certificate of occupancy.

George Stanziale, representing the applicant, stated that they could not include the roundabout in the committed element because they do not have any control of that, but all other road improvements that they have committed to would be completed prior to the first certificate of occupancy of any use on the project.

For clarification on what they can control, Attorney Kenneth Spaulding stated that the \$150,000 contribution to benefit the state and city can be done at the certificate of occupancy.

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Mayor Bell asked questions regarding acquisition of right-of-way on Grandale Drive and Barbee Road.

Ronald Stephenson, representing the applicant, made comments on the traffic study for the project. He explained the process and briefed Council on the road improvements for Barbee Road/Grandale Drive intersection, roundabout at Massey Chapel, turn lanes at the site driveway access onto Barbee Road, traffic signal at NC54 and Barbee Road.

Bill Judge, of the Transportation Department, outlined the process for acquisition of right-of-way.

Ronald Stephenson addressed Council on how they would minimize right-of-way impacts.

Mayor Bell expressed concern that some road improvements would not be completed due to the developer's inability to acquire right-of-way acquisitions.

Jim Anderson, representing the applicant, gave an overview of the apartment complex [300 units/12 buildings] design that would be on the site.

Council Member Catotti thanked the applicant and neighborhood for their efforts in working together to improve the project.

Patrick Young, of the City/County Planning Department, briefed Council on the building envelope.

Wesley Parham, of the Transportation Department, stated he conferred with NCDOT and they have advised him there is \$500,000 earmarked for the roundabout project at Herndon and Massey Chapel Road, and the total cost would be \$750,000 to \$800,000 for the project. He noted they have prepared the project design, but have not negotiated final right-of-way cost on the project nor held the community public hearing on the project, but will be doing that in the next few weeks.

Council Member Catotti asked if applicant could commit the \$150,000 contribution to City of Durham rather than NCDOT with the intention of applying it to NCDOT and if NCDOT didn't move forward with the roundabout project, the City could do signalized and other improvements to that intersection.

Wesley Parham, of the Transportation Department, replied that he was not aware of any reason why this could not be done.

George Stanziale, representing the applicant, replied they would have no problem with that request.

Council Member Catotti asked the applicant if would commit funds prior to the certificate of occupancy.

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Ronald Stephenson, representing the applicant, explained that the commitment would be taken from the loan and equity that's placed as part of the construction project so they would not be able to do that earlier than the first certificate of occupancy.

Patrick Young, of the City/County Planning Department, shared how other municipalities handled cash contribution for road improvements.

Council Member Catotti stated when moving forward, public/private partnerships are the way to go and would like for the City to think about doing a mechanism. Also, she asked staff to work with the applicant regarding the language for the commitment of \$150,000 donation to the City of Durham's Transportation Department rather than NCDOT. She made comments in support of this project.

Council Member Moffitt thanked everyone for their involvement in this case and made comments in support of this zoning map change.

Attorney Kenneth Spaulding explained why two right turns that are no longer necessary are still a part of the development plan.

City Attorney Baker stated it would take six votes to pass this item due to a valid protest petition filed.

Patrick Young, of the City/County Planning Department, highlighted what uses could be developed on site.

Several members of Council spoke in support of this zoning map change.

Patrick Young, of the City/County Planning Department, stated all roadway improvements identified on the development plan as being proffered would be provided prior to the first certificate of occupancy and the \$150,000 contribution would be made to the City of Durham rather than NCDOT.

Mayor Bell stated he would be voting against the project due to concerns from his neighbors.

Mayor Pro Tempore Cole-McFadden empathized with neighbors regarding concerns with an apartment complex and traffic in the area.

Council held discussion on Barbee Road traffic increase, the roundabout, and roadway improvement committed elements.

**MOTION** by Council Member Clement seconded by Council Member Brown to receive comments on the zoning map change for Meadows at Southpoint (Z1200001);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200001 out of Residential Rural (RR), Residential

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Suburban - 20 (RS-20), and Office Institutional (OI) and placing same in and establishing same as Commercial General with a development plan (CG(D)) and Office Institutional with a development plan (OI(D)) **FAILED** at 10:13 p.m. by the following vote: Ayes: Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: Mayor Bell and Mayor Pro Tempore Cole-McFadden. Absent: None.

**Note: Valid protest petition filed – 6 votes needed to pass zoning map change.**

There being no further business to come before the City Council, the meeting was adjourned at 10:13 p.m.

Linda E. Bratcher, CMC  
Deputy City Clerk

D. Ann Gray, MMC, NCCMC  
City Clerk

**DURHAM CITY COUNCIL WORK SESSION**  
**Thursday, March 7, 2013 – 1:00 p.m.**  
**Committee Room – 2<sup>nd</sup> Floor – 101 City Hall Plaza**

**Present: Mayor William V. “Bill” Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti, Don Moffitt and Steve Schewel. Absent: Council Member Howard Clement III.**

**Also present: City Manager Thomas Bonfield, City Attorney Patrick Baker and City Clerk D. Ann Gray.**

The meeting was called to order by Mayor Bell, and at this time the Mayor briefed the council on the Metro Mayors’ meeting with Governor McCrory and other state officials. The meeting discussion dealt with how the State’s big cities could work together to return the State’s economy to a strong foot hold. Some of the topics of discussion were light rail in the Triangle; sidewalk dining; reinstating drugs courts in North Carolina; and the development of a 25-year infrastructure plan.

The Council Members thanked Mayor Bell for the update.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk.

City Manager Bonfield stated he would like to recognize OEWD Director Kevin Dick regarding Agenda Item #4 [Brownfields Job Training Program].

The City Manager’s item was accepted by the City Council.

City Clerk Gray informed the council of a valid protest filed against Zoning Map Change 2125 Guess Road 2.

The City Clerk’s item was accepted by the City Council.

There were no priority items from the City Attorney.

After Mayor Bell announced each item on the printed agenda, the following items were pulled for comments and/or discussion.

**Subject: Environmental Workforce Development and Job Training “Brownfields”  
Contract between the City of Durham and Durham Technical Community  
College Foundation**

To authorize the City Manager to execute a contract with Durham Technical Community College Inc. in an amount not to exceed \$150,000.00 to provide curriculum development and training in environmental technology for the 2013-2015 Brownfields Job Training Program.

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OEWD Director Kevin Dick informed the council that unfortunately today is Nicholas McCoy's last day with the City of Durham. He said Nicholas would be leaving to pursue some opportunities internationally in the workforce arena (eliminating child labor globally). Mr. Dick congratulated Mr. McCoy on his accomplishments and wished him much success.

Nicholas McCoy thanked everyone for their support and mentoring over the last four years with the City of Durham. He said he was very proud and grateful of the work that has been accomplished as a city employee.

The City Council congratulated Nicholas McCoy on his new opportunity, his work with the City of Durham and wished him much success.

**Subject: Master Agreements for Transportation and Engineering On-Call Services**

To authorize the City Manager to execute master agreements for Transportation and Engineering On-Call Services with the following firms:

- AECOM Technical Services of North Carolina, Inc.
- Gannett Fleming, Inc
- John Davenport Transportation Consulting
- Kimley-Horn & Associates
- Martin/Alexiou/Bryson, P.C
- Parsons Brinckerhoff
- Renaissance Planning Group, Inc.
- Ramey Kemp and Associates, Inc.
- RK and K
- Santec Consulting, Inc.
- URS Corporation

To authorize the City Manager to execute master agreements for Data Collection On-Call Services with the following firms: 1) John Davenport Transportation Consulting; 2) Martin/Alexiou/Bryson, PLLC; 3) Ramey Kemp and Associates, Inc; and 4) Quality Counts, LLC; and

To authorize the City Manager to execute supplemental agreements pursuant to the executed master agreements for (a) Transportation and Engineering On-Call Services and (b) Data Collection On-Call Services so long as the supplemental agreements do not exceed \$100,000 for any single project.

Since 2000, the City's Department of Transportation has hired on-call consultants to assist staff in handling the workload. The on-call consultants augment the services of staff, especially in meeting critical deadlines. Typical examples of work are: 1) specialized Metropolitan Planning Organization studies; 2) services that require specialized expertise; 3) Capital Improvement Program project delivery; 4) development review; and 5) MPO project delivery.

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Council Member Schewel stated the supporting information implied the contractors are needed on call because of vacancies and turnover in the MPO staff. He asked if fully staff will there still be a need for these on-call contractors.

Transportation Director Mark Ahrendsen replied it is really both. He said they actually started the on-call selection consultants several years ago when they did have a staffing shortage within the MPO and this was a way to help with that shortage of staff. Mr. Ahrendsen said they have a couple of vacancies now and it is not a huge problem but these on-call consultants will help them deal with spikes and valleys even when they are fully staffed.

Mayor Pro Tempore Cole-McFadden asked how were the prime consultants selected.

Transportation Director Mark Ahrendsen said they go through the selection process, there is criteria that is outlined in the proposal by which the firms are selected, they are evaluated and there is a selection committee – with staff from different departments viewing the proposals and then interviewing the firms and making a recommendation.

Mayor Pro Tempore Cole-McFadden asked if the success of this approach has been evaluated since its inception.

Transportation Director Mark Ahrendsen replied yes and stated they have found it to be very successful and helpful, and he referenced the reasons.

Mayor Pro Tempore Cole-McFadden said in reviewing the supporting information there are three local firms listed and asked is there some reason why one of the firms “Bree and Associates” was not selected as one of the on-call consultants.

Transportation Director Mark Ahrendsen said he did not know what the reason was for not selecting them but he would get an answer to that question.

Mayor Pro Tempore Cole-McFadden said she was interested in local businesses and would like an answer on why “Bree & Associates” was not selected as one of the on-call consultants.

The administration will provide the requested information to the council before the March 18, 2013 City Council meeting.

**Subject: Unified Development Ordinance Text Amendment, Removal of Discretionary Regulations (TC100007**

To conduct a public hearing to receive comments on the Unified Development Ordinance Text Amendment, Removal of Discretionary Regulations; and

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To adopt an Ordinance Amending the Unified Development Ordinance, incorporating revisions to Article 2, Review Authority; Article 3, Applications & Permits; Article 4, Zoning Districts; Article 5, Use Regulations; Article 6, District Intensity Standards; Article 7, Design Standards; Article 8, Environmental Protection; Article 9, Landscaping & Buffering; Article 10, Off-Street Parking & Loading; Article 11, Sign Standards; Article 12, Infrastructure & Public Improvements; Article 13, Additional Requirements for Subdivisions; Article 14, Nonconformities; Article 15, Enforcement; and Article 16, Definitions.

Council Member Moffitt said Linda Smith, representing the Bicycle Pedestrian Commission, is present and wanted to address the council on a couple of matters regarding this item.

City Attorney Baker said as a general rule this is a public hearing item and the hearing is not opened today. He said if the council would like to have comments that is fine but the comments today will not be a part of the official public hearing.

Linda Smith, representing the Bicycle Pedestrian Commission, said the changes in the UDO are extremely complex and require very diligent work by the planning department. She said the Bicycle Pedestrian Advisory Commission's concern has to do with alternate sidewalks and the solution arrived at - a part of the revision is not the best solution and asked the council to really take a look at this before the March 18<sup>th</sup> meeting. Also, she summarized what the Bicycle Commission's recommendation is.

City/County Planning Director Steve Medlin said this item coming before the council on March 18<sup>th</sup> is in an effort to bring the UDO into compliance with the General Statutes. He said as it relates to sidewalks, the staff did review that and initially they were working toward trying to retain the ability to allow for alternate sidewalks, but as they worked through it they found it was problematic and there were so many discretionary parts of the alternate sidewalk decisions about where those sidewalks should be allowed and how much should be allowed and they were not able to come up with a process that they were comfortable with to quantify in a meaningful way. He said what is being proposed, there will be two alternatives – one you can build the sidewalk which is the preferred route or you make a payment in lieu, and the current payment amount is currently \$65.00 per linear foot. City/County Planning Director Medlin said they felt that doing one or the other was acceptable and not allowing flexibility doing partial. He said ultimately what it comes up to – if he was a developer, he would build the portion of the sidewalk which is the least costly to build and leave the most costly portion realizing that the city would be on the hook for providing that infrastructure. He said they also received the most recent comments from the Bicycle Commission and they are evaluating those and will be prepared to provide more detail on the staff's recommendation.

Council Member Moffitt asked if it was anticipated that the staff's workload will somewhat be reduced not having to work through various issues and coming up with discretionary answers.

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City/County Planning Director Steve Medlin replied I think what we are doing is exchanging that discretion with new/more sophisticated standards that staff will be responsible for ensuring compliance.

Linda Smith, representing the Bicycle Pedestrian Commission, said she was extremely aware of the discretionary clause the staff is referring to and Sidewalks, Section 6.11.4(L)2 they have provided Duke University with exactly the provisions she suggested they can use for sidewalks in lieu. She said they have a map of prioritized sidewalks, and if the developer feels that he does not want to build the sidewalk on his frontage he can choose from the map any one of the prioritized sidewalks and build it. She said the developer can gain either of the systems equally.

The City Council informed Ms. Smith that she should attend the City Council Meeting on March 18, 2013 and speak at the public hearing scheduled for this item.

Council Member Catotti said it appears that the Planning Director is saying the proposed language by the Bicycle Commissions is unenforceable, too discretionary and not workable.

City/County Planning Director Steve Medlin said he felt it would be safe to say that mixing and matching canvass wide sidewalk plans with a community-wide alternate walkway system is dangerous because there is a large degree of discretion involved. He said it is important to remember like the Duke University campus wide pedestrian plan – which is scrutinized at a very high level and unfortunately that is not the same for Durham, the Durham Walks! Plan is a good plan but it does not have the level of specificity one would need in order to make those kinds of linkages that have been made by the Bicycle Pedestrian Commission. He said it is not that staff is opposed to looking at the alternate sidewalk alternative but they are not sure what has been proposed will fit the bill and it is probably something that needs to be done in a different form or venue with full evaluation by all of the various departments, advisory boards, as well as the public including the development community.

**Subject: Proactive Rental Inspection Presentation**

To receive a presentation on the progress to date and current status of the Proactive Rental Inspection Program (PRIP).

Neighborhood Improvement Services Director Constance Stancil made a power point on the Proactive Rental Inspection Program highlighting the following:

**Neighborhood Improvement Services**

- Building sustainable communities through community engagement, code enforcement, human relations and public nuisance abatement

**City of Durham Strategic Plan (Goal 3: Thriving & Livable Neighborhoods)**

**Initiatives:**

## March 7, 2013

- Implement proactive programs to remediate non-compliant properties
- Conduct PRIP marketing campaign in Council designated PRIP areas

### Key Program Components

- Designated Area periodic inspections
- Reasonable Cause periodic inspections
- Registration
- Property Manager Entrepreneurial Program
- Self-Certification

### Program Launch – May 2012 – Ongoing

- Newspaper Advertisements, Postcard Notification; PRIP Overview/Information Kick Off Session; Realtor/Management Groups; Door to Door Canvassing; PRIP pamphlet distribution; One on One

### Top Violations Found

- Smoke or CO detectors – missing or inoperable
- Windows – damaged, do not operate properly, and/or excessive air leaks
- Plumbing leaks
- Flaking or peeling paint
- Insect infestation

### Measures – July 2, 2012 through January 31, 2013

	Proposed FY 13	July 2012 – Jan 2013
#Designated Area Inspections	5000	1965
#Reasonable Cause Inspections (citywide)	700	432
% of properties w/violations (designated area)	75%	73%
% of properties inspected with 3 or more violations	60%	41%
% of voluntary compliance in designated area	50%	51%
# of Self Certified properties	750	118/213

### Areas of Opportunity

- New software system, target March 15 – reduce case entry time, consolidate data tracking, and increase efficiency
- Increase % completion rate of initial inspections
- Complete field survey of GIS addresses in Designated Area
- Refine notification methods for efficiency and clarity
- Develop milestones & staffing strategy for 2 year re-inspection cycle
- Extension of Registration Grace Period to December 31, 2013

## March 7, 2013

- Complete 7 Priority Area inspections – March 2014
- Remaining Designated area inspections, November 2013 – July 2016

Also, Neighborhood Improvement Services Director Constance Stancil thanked the NIS Program Staff for help making the PRIP program a success thus far.

After the presentation, the following discussion was held:

City Manager Bonfield thanked the council for approving the PRIP program and he also thanked the Neighborhood Services staff for their commitment to this program.

Faith Gardner, of Neighborhood Improvement Services Department, commented on the process they use to distinguish between rental vs. homeownership. She stated they obtain information from the tax records and if the owner's address is not the same as the address of the property, they list it as a possible rental.

Neighborhood Improvement Services Director Constance Stancil stated out of the 6,000 postcards they have mailed out only 25 of them have been homeowners vs. rental.

Council Member Brown asked that the property managers receive the status report/update on the PRIP program.

Since the Neighborhood Improvements Services Department has developed a good relationship with landlords, Mayor Pro Tempore Cole-McFadden suggested that someone from that department attend the homeless advisory committee meetings.

Council Member Catotti asked what has been the biggest challenge since implementation of the program.

Neighborhood Improvement Services Director Constance Stancil said she felt they were on track to solving one of the biggest challenges and that it with the new software purchase. She said the current software does not allow for the tracking of rental inspections and the new software will be brought on by March 28<sup>th</sup>.

Due to opposition on proposed PRIP program initially, Council Member Catotti asked if any pushback is still happening and if so, where is it coming from and what does it pertain to.

Neighborhood Improvement Services Director Constance Stancil said because they involved the opposition (property owners) bringing all concerned to the table; providing outreach and they continue to have dialogue with the attorney for the apartment association, she felt their involvement in the program has been positive and lessened fears and concerns. She said fear of tenants being displaced has also been unfounded.

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Council Member Catotti said since the NIS Department is already in designated areas 3 and 4 and halfway complete, what is the short and long term plan, adding new areas.

The Neighborhood Improvement Services Director said think they will have the 7 priority areas completed by March 2014 and complete the entire designated area by July 2016, and in the second year they will go back and do re-inspections of those properties that have violations. Also, she spoke on vacant/boarded up houses and overgrown grass being complaint driven elsewhere in the city.

Mayor Bell said he felt reducing the size of the target area helped the program be successful. He said during the earlier discussions, the size of the target area was much larger and that drew a lot of opposition.

Council Member Schewel said he also thought it was important for others to hear this report. He said the way the staff has done it has lead to lots of inspections and improvements. He asked how are the low income owners of rental property doing in terms of fixing their places up.

Neighborhood Improvement Services Director Constance Stancil said it is difficult and it takes them much longer to bring their property into compliance and they tend to be the ones they enter into a memorandum of understanding with giving them more time to bring property into compliance. She said they are hoping when they begin matching them with other property owners who have the means (how to bring property into compliance, less cost) that will help. She said in talking with the Director of City/County Inspections, if the owners understood how to do the work correctly the first time, then property owners would not have that second cost for re-inspection.

Also, the Neighborhood Improvement Services Director briefed the council on the two-year re-inspection process.

The council thanked the administration for the positive report and also thanked city attorney's office for their work on the PRIP program.

**Subject: Resolution to Support the Upper Neuse River Basin Monitoring  
Re-Examination of the Falls Lake Stage II Goals at the Proposed FY 2014  
Funding Level**

To receive a presentation on the Re-Examination of the Falls Lake Stage II Goals at the Proposed FY 2014 Funding Level; and

To adopt a Resolution Supporting the Upper Neuse River Basin Association Plan for Monitoring Falls Lake and the Falls Lake Watershed to accomplish the Re-Examination of the Falls Lake Stage II Goals at the proposed FY 2014 funding level.

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At the February 20, 2013 Board meeting of the Upper Neuse River Basin Association, a revenue increase was discussed in order to begin work on the second step in the re-examination of the Falls Lake Nutrient Management Strategy goals. This second step includes monitoring and modeling of Falls Lake and the Falls Lake watershed that may occur over a period of four or more years. A subcommittee of the association has recommended fully funding all monitoring studies associated with the primary objectives of Lake Response Modeling and Support of Regulatory Options for a period of 4 years. The estimated cost of fully funding monitoring associated with these two objectives is estimated at up to \$4.4 million. The subcommittee recommended a lower level of funding for FY 2014, at \$500,000 for monitoring, with an increase to \$800,000 in FY 2015. This recommendation is being considered by the Upper Neuse River Basin Association member governments between the February and March meetings. The City of Durham currently contributes approximately \$60,000 per year to the UNRBA. The City of Durham's contribution for FY2014 would increase to \$149,741.67.

Other major contributors in FY2014 would be as follows:

City of Raleigh -	\$179,267.41
Orange County -	\$ 68,341.06
Durham County -	\$ 57,296.11
Granville County -	\$ 42,286.38

These local governments account for approximately 77% of the FY2014 revenue goal of \$643,500.

Michelle Woolfolk, of the Public Works Department, gave a power point presentation commenting on the following topics:

- Falls Lake Association Goals Reflected in the Path Forward
- Steps to a Re-examination of Falls Lake (Stage II)
- Re-examination is expensive, but Durham needs it to change Stage II
- Lake Monitoring
- Ecosystem Component
- Existing Development Retrofits
- NDWRF Upgrades
- Cooperating through UNRBA benefits Durham
- FY2014 Proposed Dues by Jurisdiction
- Re-Examination must be submitted by 2021
- Timeline
- Continued support for UNRBA efforts toward the re-examination

After the presentation, Mayor Bell reminded the administration about his earlier meeting this week in which Governor McCrory indicated he's open to looking at the whole issue about regulations. The Mayor suggested the administration make contact with the new DENR

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Secretary to have a discussion about concerns regarding anti-pollution regulations the state has established for the Falls Lake Watershed.

The council members agreed with Mayor Bell's suggestion.

Also, Council Member Schewel raised a concern that the funding formula for the Upper Neuse association did not ask more of the City of Raleigh. He indicated that those who want their water clean should be paying more.

**Subject: Sole Source Purchase of Kruger ANITA Mox Nitrogen Removal Process**

To receive a presentation on the ANITA Mox Nitrogen Removal Process;

To authorize the City Manager to execute a purchase contract with I. Kruger Inc. for the purchase, delivery, startup and monitoring services for the ANITA Mox System in the total amount not to exceed \$647,100.00; and

To authorize the City Manager to enter into a 10-year right-of-entry agreement allowing I Kruger Inc. access to the site to harvest "seeded" media.

The Falls Lake and Jordan Lake rules that become effective in 2016 will require significant reductions in the amounts of nutrients discharged from the North and South Durham Water Reclamation Facilities. The recent Water Reclamation Facility Master Plan developed by Hazen and Sawyer recommended that the department utilize the patented and proprietary ANITA Mox nitrogen removal system ("ANITA Mox System) owned by I. Kruger Inc. as the preferred approach to meet the stringent nutrient limits at SDWRF. There is no competitive process that performs at the same level of the ANITA Mox System, and Kruger is the only source and vendor of the ANITA Mox System. Staff recommends the direct purchase of the system equipment from Kruger. The equipment will be installed in an upcoming construction at the South Durham Water Reclamation Facility.

Additionally, Kruger and the City have negotiated a 10-year right-of-entry agreement that will allow Kruger to access the site to add or remove "seeded" biological media at the plant. In return for this right-of-entry agreement, Kruger has agreed to give the City a discount on the purchase price for the ANITA Mox System.

Water Management Director Don Greeley gave a power point presentation on this item as follows:

**Jordan Lake Rules Impacts for South Durham WRF**

Total Nitrogen

- Current limits – 334,704 lbs/year; 515 mg/l at permitted flows (20 MGD); 12.57 mg/l at current flows (8.75 MGD)

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2018 Limits\* - 185,345 lbs/year

- 3.0 mg/l at permitted flows
- 6.95 mg/l at current flows

\*Based on Cape Fear Basin Water Quality Model using data 1997-2001

**Scope of WRF Master Plans**

- 20-year planning period
- Long-term compliance evaluation to look beyond 20 years
- Near Term Compliance and Smart Infrastructure investment to meet future regulations
- Falls Lake Rules which impact NDWRF
- Jordan Lake Rules which impact SDWRF

**South Durham Capital Upgrades (Funding Year; Project Name and Costs)**

**Typical Wastewater Process**

**What is a Side Stream**

- Any process flow resulting from the treatment of bio-solids that flows back into the liquid treatment train

**What is Side Stream Treatment**

- Used to achieve a nutrient removal objectives
- More cost effective for nutrient removal
- Nutrient recovery for potential reuse
- Typical side stream treatment options: Chemical phosphorus precipitation; Struvite recovery; Bioaugmentation; Nitritation/denitritation; Nitritation/deammonification (Annamox)

**Why Consider Side Stream Treatment**

- Process Stability
- Cost Effectiveness

**Summary of Side Stream Nitrogen Removal Evaluation**

- Total capital investment for Durham for ANITA Mox and bioaugmentation comparable
- ANITA Mox has lower O&M costs providing long-term cost savings
- Demonstrate success with ANITA Mox at one plant, implement at the other soon thereafter
- Kruger offering financial incentives to fast-track this project

Also, Water Management Director Don Greeley briefed the council on the general terms of the contract with I. Kruger, Inc.

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The City Council thanked the administration for the report and for being creative in this approach pertaining to this item.

At this time, City Clerk Gray announced that Edward Kwon received 6 votes for appointment to the Citizens Advisory Committee.

**Settling the Agenda - March 18, 2013 City Council Meeting**

City Manager Bonfield announced the following items for the March 18, 2013 City Council Meeting agenda: Consent Agenda Items 1 thru 10; and 13; General Business Agenda Item 12 and Public Hearings Items 14 thru 17.

**Motion** by Council Member Schewel seconded by Council Member Catotti to approve the agenda for the March 18, 2013 City Council Meeting as stated by the City Manager.

The motion was approved by a vote of 6/0 at 3:35 p.m.

There being no further business to come before the council, the meeting was adjourned at 3:36 p.m.

D. Ann Gray, MMC, NCCMC  
City Clerk

**DURHAM CITY COUNCIL WORK SESSION**  
**Thursday, February 21, 2013 – 1:00 p.m.**  
**Committee Room – 2<sup>nd</sup> Floor – 101 City Hall Plaza**

**Present: Mayor William V. “Bill” Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti, Don Moffitt and Steve Schewel. Absent: Council Member Howard Clement III.**

**Also present: City Manager Thomas Bonfield, City Attorney Patrick Baker and City Clerk D. Ann Gray.**

The meeting was called to order by Mayor Bell and he asked if there were any announcements by the Council.

Council Member Brown said it was announced this morning that the Durham Bulls facility will host the 2014 All-Star Game in July. He said this event is a great promotion for the City of Durham. It is expected to bring millions in visitor spending.

Mayor Bell asked for priority items from the City Manager, City Attorney and City Clerk.

City Attorney Baker requested a closed session at the end of the meeting for attorney-client consultation, Gonzalos vs. City of Durham, pursuant NCGS 143.318.11(a)(3).

The City Attorney’s item was accepted by the City Council.

City Clerk Gray informed the council that a valid protest petition has been filed against Zoning Map Change Meadows At Southpoint.

The City Clerk’s item was accepted.

There were no priority items from the City Manager.

At this time, City Manager Bonfield reminded the City Council that the City of Durham has been selected as one of the 20 finalists for the Bloomberg Mayor’s challenge competition. Also, a two minute video was shown highlighting Durham’s project, and the community is being asked to vote for the Durham video.

Referencing Item #8 on the agenda “An amendment to agreement to provide design services for structural repairs at Church Street Parking Deck” Mayor Pro Tempore Cole-McFadden asked the administration to provide the workforce statistics for Kimley-Horn and Associates before the March 4, 2013 City Council Meeting.

Council Member Catotti asked the administration to provide the definition of “bore and jack” referenced in the agenda item “Southern Reinforcing Main Phase IIB Project.” This information will be provided by the administration before the March 4, 2013 City Council Meeting.

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After Mayor Bell announced each item on the printed agenda, the following items were pulled for discussion and/or comments by the council.

**Subject: Second Amendment to Management Agreement between City and County of Durham and Global Spectrum, L.P. for the Durham Convention Center**

To authorize the City Manager to execute the second amendment to the management agreement by and between the City and County of Durham and Global Spectrum, L.P. for the Durham Convention Center.

The City and County of Durham propose to amend the management agreement with Global Spectrum, P.P. specifically amending the FY11/12 contract year (and resulting revenue benchmark) to reflect the ten months rather than twelve months of fiscal year 11/12, that the facility was open following extensive renovations. The proposed amendment memorializes that the Durham Convention Center was not fully operational due to the renovation project and through no fault of Global Spectrum, until September 2011, and allows adjustment of the contractual incentive clause Section 3.2, to reflect this modification. The amendment would allow Global Spectrum to earn an incentive payment for their performances based upon ten months of actual operations/revenues, instead of the twelve projected months. The Durham Convention Center Authority voted to recommend this contract modification at its October 25, 2012 Board meeting.

Council Member Schewel asked what is Global Spectrum's revenue (bottom line) in comparison to Shaner Group, he asked did Global make money or did they lose less than Shaner.

General Services Joel Reitzer stated in the last operating year by the Marriott there was a subsidy loss in the amount of \$1.35 million and the city and county both shared equally in that. In the first full year of Global's operating contract, they were not able to start up until October 10<sup>th</sup>, but during that first full operating year the budget was about \$633,000 and Global finished under \$300,000.

**Subject: Amendment to Contract for Fun2Ref as Booking Agent**

To authorize the City Manager to execute an amendment to the booking agent contract with Dan Dunbar and Lynn Dunbar dba – Fun2Ref for \$8,640.00 so that the total contract amount will be \$57,836.00.

The Department of Parks and Recreation began hiring booking agents for officials for athletic games and events in 2010. Several organizations are currently under contract, each managing officials for multiple sports. One of those organizations has now left the business; and the Parks and Recreation Department is requesting a contract amendment for another contracted organization to pick up the remaining period of the contract for officials for adult softball, increasing the contract amount for Fun2Ref by \$8,640.00 for 160 matches, to \$57,836.00.

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Mayor Pro Tempore Cole-McFadden asked where was the booking agent “Dan Dunbar & Lynn Dunbar” located.

Beth Timson of the Parks and Recreation Department stated they were located in Durham.

**Subject: Assessment Rates for Petitioned Sidewalk Improvements**

To adopt a Resolution Establishing the Assessment Rate for Petitioned Sidewalks outside the Durham Walks! Pedestrian Plan and maintaining the Current Assessment Rate for Petitioned Sidewalks inside the Durham Walks! Pedestrian Plan and allowing a change in priority for those petitioned sidewalks inside the Plan; and

To adopt an Ordinance to Change Petitioned Sidewalk Assessment Rates.

The City Council has expressed a desire to bring the sidewalk petition process more in line with the existing Durham Walks! Pedestrian Plan. As a result, staff is recommending that the City begin issuing two types of petitions. The first will be a petition for sidewalk improvements for sections of sidewalk that already lie within the Durham Walks! Pedestrian Plan but are not yet fully funded. Citizens would have the opportunity to petition for these improvements, and upon achieving a sufficient petition, the sidewalk would be ordered by Council with the understanding that his section of sidewalk would move to a higher priority on the Walks Plan and be subject to a maximum assessment of \$35.00 per front foot, with an eight year payback period, at an annual interest rate to be determined by Council at the time of assessment roll confirmation as set forth in Resolution #9815, adopted by City Council on May 7, 2012.

The second petition option that is being recommended would allow citizens to petition for sidewalk improvements that lie within the City limits but are not currently on the Durham Walks! Pedestrian Plan. With these petitions there would be an understanding that 100% of the actual cost of the improvement would be assessed against the abutting properties. This would allow the requested sidewalks to be built by the City and to be fully funded by the abutting property owners through the assessment process. As an “actual cost” assessment project, the assessment rate would not be determined until after the project is completed and all costs are tabulated. These assessments will have an eight (8) year payback period, at an annual interest rate to be determined by Council at the time of assessment roll confirmation.

Council Member Schewel said the Bike PED Committee supported this but recommended lower threshold charges and asked the administration what were their thoughts on this recommendation.

Nathan McHenry, of the Public Works Department, said they did receive the recommendation but they took that to be the threshold of the sufficiency of the petitions. He said the charter calls for at least a majority for a petition to be sufficient and he did not think that prohibits them from raising that threshold.

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City Manager Bonfield said he was not clear if they were talking about a higher threshold or lower threshold.

Council Member Moffitt said he was present at the Bike PED meeting and the concern is with the \$35.00 linear foot (actual cost whichever applies) and the threshold of 51% they are concerned about - people ending up with a significant bill with the city. He said they are saying with a higher cost, maybe a higher threshold should be considered for installing sidewalks.

Nathan McHenry said the way he reads it in the charter, at least a majority and there is nothing that prohibits that.

City Manager Bonfield said this is council's policy and if the council feels that would be appropriate.

Robert Joyner, of the Public Works Department, said he was at the Bike PED meeting and the suggested percentage, not by a formal vote, was 75%.

Nathan McHenry referenced moving petitioned sidewalks up in priority, if they are already in the Durham Walks! Plan and the citizens are willing to pay a portion of that bill it would help the sidewalk to move up.

City Manager Bonfield asked if the council wanted the threshold to be raised to 75% for installing sidewalks.

Council Member Catotti replied at least 70% and others members of council agreed.

The administration will provide a revised resolution noting the 70% threshold.

**Subject: Franklin Village Resident Council**

To receive comments from Charlestine Royster regarding community events in Franklin Village.

Charlestine Royster and Cheryl Smith, residents of Franklin Village, recognized several people and presented them with certificates for helping them get their community back on track.

**Subject: District One/PAC One**

To receive comments from Vivian McCoy and Dave Rush regarding community issues including dirt streets.

Vivian McCoy stated District One has 45 unpaved streets and said she would like to call the council's attention to one particular street which is Briggs Avenue where Dave's Scrap Metal Company is located. She presented the council with a petition with 821 signatures requesting that the unpaved portion of Briggs Avenue be paved. Also, she provided council with pictures

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showing the unpaved portion of Briggs Avenue, Cates Street and Cain Street in various locations.

Dave Russ addressed the council commenting on the houses and businesses located in the Briggs Avenue area with unpaved streets. He said if the streets were paved it would help bring business to the area.

Mayor Bell asked the City Manager, along with the Public Works Director, to review the concerns raised regarding the unpaved streets.

Council Member Catotti said the areas mentioned by the residents - on google map it appears they are not far from the Angier-Drive intersection where streetscape improvements are being proposed and perhaps the area in question could also be looked at.

**Subject: Scott Barndt**

To receive comments from Scott Barndt regarding the solicitation permits.

Scott Barndt addressed the council stating he was concerned about the recent solicitation ordinance that was approved. He said there was nothing wrong with the previous law; it only needed to be enforced. Mr. Barndt asked the council to revisit the recently approved solicitation ordinance. He also spoke on ending homeless in Durham and said with the revised ordinance he felt crime would also increase.

**Subject: Open Table Ministry**

To receive comments from Reverend Carolyn Schuldt regarding the human impact of Ordinance #14375 – Revise Restrictions on Soliciting Motor Vehicles in Roadways.

Rev. Carolyn Schuldt spoke on the city's recent passage of the ordinance regarding solicitation and the negative effect it has had on the less fortunate.

Mayor Pro Tempore Cole-McFadden said she had planned to ask the City Manager to look at what benchmark cities are doing regarding solicitation. She asked Rev. Schuldt since she lived in Apex, how does the Town of Apex handle solicitation.

Rev. Schuldt replied that she did not work with homeless persons in Apex, and said she did not know the answer but would be glad to get that information.

Mayor Pro Tempore Cole-McFadden said she recently had a complaint from a resident along Duke Street complaining that solicitors were standing in her yard and the resident was threatening to move because it was unbearable. Mayor Pro Tempore Cole-McFadden said she would like to sit down with Rev. Carolyn Schuldt and have a discussion on how the resources

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currently in placed can be used to assist the homelessness. She said it is very important that people avail themselves to all the resources offered in Durham.

Rev. Carolyn Schuldt said the reason the solicitors are now on Duke Street is because there is no other place in town they can solicit.

Mayor Pro Tempore Cole-McFadden said she understood that; however, she did not want the residents of Durham to move either because they are paying a whole lot of taxes.

Council Member Brown stated this is the second time Rev. Schuldt, who resides in Apex, has addressed the council on this matter and he said she is trying to generate opposition to the ordinance passed visa the various churches. He said he spoke with his minister about the ordinance and he very much understood the council's point of view. Also, Council Member Brown referenced a brochure that was done by the Inter-Neighborhood Council of Durham entitled "Real Change Not Just Spare Chain", and said that is what we need. He said the purpose and focus of the article is to get people off the streets because the street is not the answer.

Council Member Brown also commented on the reason the ordinance was passed due to complaints from citizens pertaining to litter; safety; etc.

**Subject: Fred Smith Company (Contract ST-258) - Angier-Driver Streetscape Project**

To authorize the City Manager to execute a contract for ST-258, Angier-Driver Streetscape Project with the Fred Smith Company in the amount of \$3,316,720.60.

To establish a contingency fund the amount of \$663,344.12; and

To authorize the City Manager to execute change orders to the contract so long as the total project cost does not exceed \$3,980.064.72.

On December 19, 2012, bids were opened for Contract ST-258. The contract involves street demolition and construction, replacement of electrical, water, sewer and storm water utilities, installation of streetscapes and landscaping, and traffic signals and decorative street lighting for the Angier-Driver Business District in the City of Durham. The lowest responsive bid was submitted by the Fred Smith Company of Clayton, North Carolina. The Public Works Department recommends that the City Council authorize the City Manager to execute a contract with the Fred Smith Company for Contract ST-258 in the amount of \$3,316,720.60 with a contingency of \$663,344.12 (~20%). This results in a total cost amount of \$3,980.064.72.

Public Works Director Marvin Williams stated on the Angier-Drive Streetscape Project they will be using the same filterra system used in front of City Hall.

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Council Member Brown asked about the residents/neighbors in the area and their comments on this project.

Public Works Director Marvin Williams said they had several meetings with business owners and residents and they are well aware of what is going to be done. He said he was not aware of any negative feedback from the residents at this point.

Public Works Director Marvin Williams said construction will start in May 2013 with completion in the fall of 2014.

From an economic development standpoint, Council Member Catotti asked if there were clear outcomes on what is expected from this project, since infrastructure is being put in.

City Manager Bonfield said the genesis of this project was the RKG study done some years back and there were five neighborhoods that were identified out of OEWD, a project for possible streetscape improvements, and this was one identified having the most immediate potential for economic fallout or improvements because of the streetscape and said hopefully it will lead to redevelopment of that neighborhood.

Council Member Schewel spoke in the support of the item and raised concern that none of the minority contractors-subcontractors were local. He asked if the new SDBE program being proposed for local bidders, would that affect a situation like this.

City Manager Bonfield said this is small business not SDBE. The City Manager said because this is a purchase contract process over a significantly higher amount.

Deputy City Manager Wanda Page spoke on the city setting the goals of all projects being over \$100,000 and for projects under \$100,000 they do not currently set participation goals.

**Subject: FY 2012-13 Second Quarter Financial Report**

To receive a presentation on the FY 2012-13 Second Quarter Financial Report.

Finance Director David Boyd presented a power point presentation on the second quarter financial report for FY 2012-13. This report is based on six months of financial information and is also available on the city's website at: <http://durhamnc.gov/ich/as/bms/Pages/Quarterly-Reports.aspx>, and on file in the Office of the City Clerk.

Finance Director David Boyd reported on the following:

- General Fund – Revenues
- Update on Property Taxes
- General Fund – Expenditures

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- Water and Sewer Fund – Revenues & Expenses
- Water and Sewer Capital Facility Fee Fund
- Transit Operations Fund – Revenues & Expenses
- Solid Waste Fund – Revenues & Expenses
- Stormwater Fund – Revenues & Expenses
- Parking Fund; Ballpark Fund and DPAC Fund

The Council thanked the administration for the report.

**Subject: Report on Failed and Struggling Developments**

To receive a report pertaining to the status of Failed and Struggling Developments.

The Failed and Struggling Development Program was created to assure the completion of all required infrastructure and private stormwater facilities at minimal costs to citizens and the City of Durham. The City of Durham's Public Works Department currently oversees the program and is responsible for approximately 138 projects or phases of projects; which span across 34 subdivisions.

Robert Joyner, of the Public Works Department, reported on the following:

- Number of projects per category as of February 5, 2013
- List of developments added to program since July 1, 2012
- Status of current Category 4: Failed developments
- Status of Category 3 Projects in Litigation: Stonehill Estates and Ravenstone I & II
- Developments successfully completed since July 1, 2012

Frank Thomas, representing the Homebuilders Association, expressed concern regarding the city tightening bond requirements forcing developers to buy more insurance. He said construction firms are finding there is a shortage of good building lots in Durham for new single-family homes because developers are having more trouble arranging finance. Mr. Thomas said the previous system worked for decades without any negative impact on the city and it took the second-worst economic crash in the history of the country to cause these extraordinary circumstances.

Council Member Schewel noted that he was not certain that the city went far enough in tightening its rules and did not agree with Mr. Thomas' comments about the crash being a one-time incident.

Frank Thomas also mentioned the real estate market is recovering more rapidly in Wake County with building permits there being up about 100 percent.

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Council Member Catotti replied that the City of Durham's permits are also up and the reason Wake County's numbers were higher because they are a larger county.

At this time, City Clerk Gray announced that Michael Valentine received 6 votes for appointment for the Durham Bicycle & Pedestrian Advisory Commission; David Davis received 6 votes for appointment to the Durham City/County Appearance Commission; and Christopher Werner received 6 votes for appointment to the Durham City/County Environmental Affairs Board.

**Settling the Agenda – March 4, 2013**

City Manager Bonfield announced the following items for the March 4, 2013 City Council Meeting agenda: Consent Agenda Items 1 thru 15; GBA Item 17 and Public Hearings Items 19 thru 21.

**Motion** by Council Member Schewel seconded by Council Member Brown to settle the agenda for the March 4, 2013 City Council Meeting as stated by the City Manager.

The motion was approved by a vote of 6/0 at 3:22 p.m.

**Closed Session – 3:22 p.m.**

**Motion** by Council Member Catotti seconded by Council Member Schewel to hold a closed session to discuss matters relating to the location or expansion of industries or other businesses in the City of Durham, pursuant to G. S. 143-318.11(a)(4); and

To hold a closed session attorney-client consultation "Gonzalos vs. City of Durham, pursuant to G.S. 143-318.11(a)(3).

The motion was approved by a vote of 6/0 at 3:22 p.m.

**Open Session – 4:48 p.m.**

**Motion** by Council Member Schewel seconded by Council Member Brown to return to open session.

The motion was approved by a vote of 6/0 at 4:48 p.m.

No action was taken by the council in open session.

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There being no further business to come before the council, the meeting was adjourned at 4:48 p.m.

D. Ann Gray, MMC, NCCMC  
City Clerk